

Application No.: 10/823,403
Reply to Notice of August 29, 2006

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Remarks/Arguments

This Reply is in response to the notice mailed on August 29, 2006. Claims 1-43 have been canceled, therefore rendered all rejections moot. Newly presented claims 44-48 are from USSN 10/690,391. A confirmation on the unique characteristic of the manufactured copper ingot from the third party companies can be found in the Declaration filed under 37 CFR 1.132, which was submitted in the June 2, 2006 amendment. The errors in the specification have been corrected by the amendment set forth above.

No new matter is added by virtue of these amendments.

Obviousness Type Double Patenting

All claims have been provisionally rejected under the doctrine of obviousness-type double patenting over US patent No. 6,572,792 and 6,921,497. The Applicant filed a terminal disclaimer to both patents cited on May 30, 2006, signed by the undersigned, stated to be an attorney of record. Certain overlapping claims were presented in USSN 10/659,090. Upon an indication of otherwise allowable subject matter, an additional disclaimer will be presented.

Rejection Under 35 U.S.C. §101

The Examiner rejected claims 44-48 of the copending application no. 10/690,391, stating that the disclosed invention is inoperative and therefore lacks utility, asserting that "the instant compositions cannot exist according to conventional scientific theory." Applicant respectfully disagrees. While not bound by the theory, the Applicant has provided substantial data and evidence that supports the conclusion that the claimed compositions are characterized by a modification to the composition's electronic state. As established by the Declaration filed herewith, this data has been confirmed by third parties. As established by the evidence presented in the specification with respect to the physical properties (altered magnetism, ductility, resistivity, reactivity, etc.) that flow from altering an element's electronic state enables the new composition of matter for a

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variety of utilities. Applicant respectfully requests that the rejection under 35 U.S.C. §101 be withdrawn.

Rejection Under 35 U.S.C. §112, First Paragraph

The Examiner rejected claims 44-48 (from application no. 10/690,391) stating that the specification does not enable one of ordinary skill in the art to make or use a composition of matter that is distinguishable from its naturally occurring state, in that it would require undue experimentation to do so. The Examiner further asserts that the data produced may have resulted from the introduction of impurities during sample preparation or heating schedule, or inadvertently present during preparation for analysis.

The Applicant respectfully traverses. Firstly, the Applicant is not asserting that new elements are being made in the present application. Without being bound by theory, the Applicant believes that the process imparts upon existing compounds (e.g., copper) which exhibits novel properties. Further, the Examiner need not embrace the Applicant's theories to find the invention patentable. Indeed, not all phenomena observed in nature are bound or easily explained by "conventional theories." Rode, et al. in *Phys. Rev. B*, 70, 2004, for example, discusses unconventional magnetism in an all-carbon nanofoam. A copy of this paper has been submitted to the Examiner in the June 2, 2006 amendment. The Applicant has presented 14 working examples with detailed XRF analysis that showed each of the manufactured ingots contains a different elemental signature from its corresponding natural occurring metal state. There is no basis to conclude that the result is explained by impurities or from transmutation of metals. The manufactured ingots are still the same starting metal, but exhibit different electronic state scans from their original precursor in the GMS, XRF, PIXE, and GDOES analyses. Confirmation of these analyses from the third party companies for the copper ingot was submitted as a 1.132 declaration in the June 2, 2006 amendment. Withdrawal of the rejection is respectfully requested.

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Conclusion

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned at (978) 251-3509.

Respectfully submitted,

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